

## Client Alert



September 2016

### How Circular Letter on New Fit and Proper Test Rules Affects Insurers

#### Recent Development

On 30 August 2016, the Financial Services Authority (*Otoritas Jasa Keuangan* or "**OJK**") issued Circular Letter No.31/SEOJK.05/2016 on Fit and Proper Test ("**FPT**") for Financial Services Institutions ("**FSI**") Primary Parties ("**Circular 31**") which took effect on the same date. Circular 31 further implements OJK Regulation No. 27/POJK.03/2016 on FPT for FSI Primary Parties ("**Regulation 27**").

This client alert is an update to our previous client alert on Regulation 27. Please click [here](#) to see our full client alert on this matter.

#### Implications

All FPT applications for insurance Primary Parties must be made in accordance with Circular 31. As Circular 31 requires a substantially different set of application forms and supporting documents, insurance companies that are in the midst of preparing a FPT application will need to restart the application.

#### Noteworthy Provisions

##### Clarification on Definition of Controller of an Insurance Company

Circular 31 now clarifies that a **Controller** of an insurance company means:

1. an individual and/or a legal entity that holds shares in an insurance company and meets the criteria of a Controlling Shareholder;
2. an individual and/or a legal entity that does not hold shares in an insurance company, but is assigned as a Controller by the insurance company; and/or
3. an individual and/or a legal entity that does not hold shares in an insurance company, but is assigned as a controller by the OJK.

Further Circular 31 defines **Controlling Shareholder** as an individual, a legal entity and/or a group of companies that:

1. owns 25% or more of the issued shares with voting rights; or
2. owns less than 25% of the issued shares with voting rights, but has direct or indirect control.

This means that Circular 31 now clarifies that a Controlling Shareholder (as Controller) is also subject to a FPT, as this was not clear under Regulation 27.

### FPT Subjects

In general, any party that is nominated as a **Primary Party** as listed below is subject to a FPT:

1. a Controlling Shareholder;
2. a Controller;
3. **Other Primary Parties** (i.e. members of the board of directors (**BOD**), board of commissioners, and Syariah Supervisory Board, internal auditor or actuaries) (as described under Section II.2.c of Circular 31).

A party:

1. that has acquired a listed insurance company's shares and qualifies as a Controlling Shareholder; or
2. that has the capability to control a listed insurance company and qualifies as a Controller,

before passing the FPT (as share transfers in the capital market can be made without the OJK's prior approval) are prohibited from acting as a Controlling Shareholder or a Controller until that party passes the FPT (see below).

Other Primary Parties, being reappointed for the same position, do not need to sit the FPT, except for internal auditors that have never sat a FPT prior to the issuance of Regulation 27.

### FPT Procedures

The following parties must submit an application, with the required forms and supporting documents stipulated in Circular 31, to the OJK:

1. The prospective owner, founder or BOD members of the insurance company, if the application is submitted in relation to obtaining an insurance business license on establishment.
2. The BOD members of the insurance company, if the application is submitted after obtaining an insurance business license.

### Self-Assessment

The nomination and remuneration committee of an insurance company must first conduct a self-assessment on the Other Primary Parties using a specific form stipulated under Circular 31. The completed self-assessment form then must be submitted together with the FPT application to the OJK.

A self-assessment does not need to be done for a Controlling Shareholder or a Controller.

### **FPT Assessment**

The Controlling Shareholder or the Controller must undergo the following assessments as part of the FPT:

1. An administrative assessment (this assessment is to assess the integrity requirements, financial reputation requirements or financial soundness requirements and/or competency requirements); and
2. A presentation by the Controlling Shareholder or the Controller, if deemed necessary by the OJK, on:
  - a) a proposed development plan for the insurance company for the next 3 years; and
  - b) a proposed strategy if the insurance company is encountering financial difficulties.

In the presentation the Controlling Shareholder or the Controller, in the form of a legal entity, can be represented by one of (a) its BOD members, (b) its group company's BOD members or (c) its owners and ultimate shareholders. In case none of the above parties are able to attend, an officer having a position 1 level lower than the BOD members can attend based on powers of attorney.

A Other Primary Party must undergo the following assessments as part of the FPT:

1. An administrative assessment; and
2. Provide clarifications if:
  - a) the OJK has negative information about the candidate;
  - b) the candidate does not have any experience related to his/her intended position in an insurance company; and/or
  - c) the candidate has previously failed a FPT.

### **FPT Results**

The FPT written decision will be issued to the insurance company within 30 working days after the OJK receives a complete application.

If the FPT decision is affirmative, then:

1. the Controlling Shareholder or the Controller is permitted to acquire the insurance company's shares; and
2. the Other Primary Party is permitted to assume the intended position and his/her effective date of appointment must be no later than 3 months after the FPT decision date.

If the FPT decision is negative, then:

1. the proposed Controlling Shareholder is prohibited from acquiring the insurance company's shares;

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2. the proposed Controller is prohibited from taking control over the insurance company (i.e. it must not directly or indirectly influence the management and/or the policy of the insurance company);
3. the proposed Other Primary Party is prohibited from being appointed to hold the intended position.

If the FPT decision is negative, and:

1. the Controlling Shareholder already holds the insurance company's shares, then:
  - a) it must transfer its shares in the insurance company within 1 year after the FPT decision date, such that it will no longer be a Controlling Shareholder. However it is prohibited to transfer shares to its affiliated parties (as defined under Section VII.C.8 of Circular 31); and
  - b) it will not be able to exercise its shareholder rights over the newly acquired insurance company's shares.

Failure to transfer the insurance company's shares (as intended in point 1(a) above) will mean that the Controlling Shareholder will not be able to exercise its shareholder rights over all of its shares in the insurance company.

2. If the FPT decision is negative and the Controller already controls the insurance company, then it must release its control.
3. If the FPT decision is negative and an Other Primary Party has already been appointed to the intended position, then his/her appointment must be cancelled no later than 3 months after the FPT decision date.